

Missouri Essay Question 1
July 2004 Bar Examination
Remedies

Grandpa owns 200 acres of land in Stone County. He decides he wants to give his granddaughter, Ann, 10 acres, and commissions a survey to develop a legal description for the 10-acre tract. Grandpa and Ann discuss Grandpa's gift, and they walk the land together while Grandpa shows Ann the 10-acre tract he intends to give to her.

Grandpa prepares and executes a valid Deed and delivers it to Ann. Ann records the Deed. Grandpa accidentally uses the legal description for the entire 200-acre tract in the Deed instead of the legal description for the 10-acre tract he intended to give to Ann. At the time, Ann is unaware that the legal description in the Deed is incorrect.

About a year later, Ann learns of the incorrect legal description in the Deed when she receives the tax bill for the entire 200-acre tract. She does not tell Grandpa, because she and Grandpa have had a falling out and are no longer speaking to one another.

At about the same time, Meg-a-sino, a huge gambling Casino, announces plans to build a casino in Stone County. The Casino enters into a contract with Ann to pay \$5,000,000 for the 200 acres, believing her to be the lawful owner based on the recorded Deed.

Grandpa hears of the Casino's contract with Ann. Grandpa checks the records at the Recorder of Deeds Office, and discovers he unintentionally conveyed 200 acres to Ann instead of the 10 acres he intended.

1. If Grandpa files a lawsuit against Ann before she completes her sale of the land to Casino, what cause of action can Grandpa assert if Grandpa wants a Judgment correcting the Deed? Explain the elements of the cause of action and analyze Grandpa's likelihood of success.
2. Assume Grandpa does not learn of the error in the Deed until shortly after the Casino has purchased the land from Ann, and that Ann has used the money paid by the Casino to buy a huge mansion in her sole name. What cause of action can Grandpa assert against Ann to claim an interest in the mansion?

Explain the elements of the cause of action and analyze Grandpa's likelihood of success.

3. Assume Casino had no actual or constructive notice of Grandpa's error in preparing the Deed, and that Casino now owns the 200-acre tract, having paid Ann a fair price. What effect does this have on Grandpa's ability to assert a cause of action to correct the Deed? Explain.

Missouri Essay Question 2
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Trusts

Several years ago, Settlor executed a revocable trust agreement, naming Daughter as Trustee. In the document, Settlor reserved the right to amend the trust agreement by a writing delivered to the Trustee. The trust was funded with shares of stock.

Exhibit A and Exhibit B were attached to, and made a part of, the original trust agreement. The various stocks which funded the trust were divided, some being listed on Exhibit A, the others on Exhibit B. The trust agreement provides that at Settlor's death, the stocks listed on Exhibit A are to be distributed to Daughter and the stocks listed on Exhibit B are to continue in trust for the benefit of Son, for life. The trust agreement further provides with respect to Son's trust:

“Upon the death of my Son, the trust principal shall be distributed to my Son's issue, per stirpes. If, however, my Son is not survived by issue, then the trust principal shall be divided equally among my surviving Sisters.”

Settlor intended that Daughter and Son each receive, either outright or in trust, an equal amount. Accordingly, Settlor periodically revised Exhibit A and Exhibit B to maintain equal values. Each time a revision was made, Settlor sent the revised Exhibits to Trustee with a letter stating that the enclosed Exhibits were to govern division of the stocks.

Settlor ultimately became frustrated by the constant monitoring of the stock values. Settlor called Trustee and told her of his frustration and instructed her to ignore Exhibits A and B and simply divide the stocks equally, by value. Trustee agreed to do so. Settlor then wrote on his copy of the last revision of Exhibits A and B: “Forget it. My Daughter/Trustee knows what to do.”

Settlor was survived by Daughter, Son and two Sisters. At Settlor's death, the value of the Exhibit B stock was substantially greater than the value of the Exhibit A stock. Daughter, as Trustee, proposes to divide the stock equally. Son objects and insists upon distribution of the Exhibit B stock to his trust.

At this point, the remaining Sister (one of the Sisters having died since Settlor's death) intervenes and attempts to mediate. Angered by the Sister's actions, and knowing that Sister stands to receive his trust if Son dies without issue, Son legally adopts his best friend, Buddy, an adult person.

Several months later, with the division question still unresolved, Son dies. Neither of Sisters survived Son, and Son died without issue other than Buddy.

1. Was the trust agreement validly amended to provide for equal division of the stock? Explain fully.
2. Is Buddy entitled to receive the principal of Son's trust? Explain fully.
3. Assume Son had not adopted Buddy. Would the principal of Son's trust be distributable to the heirs of Settlor or to the heirs of the two Sisters who survived Settlor and why? Explain fully.

Missouri Essay Question 3
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Missouri Civil Procedure

Oak Tree, Inc., owns and operates a manufacturing plant in Lincoln County, Missouri. Oak Tree's headquarters are in Jackson County, Missouri. Oak Tree has no offices or facilities in the City of St. Louis. Over the last few years, for budgetary reasons, Oak Tree has delayed implementing various safety procedures intended to reduce the risk of explosions at the plant, despite warnings from company engineers.

Robert Jones is chief financial officer of Oak Tree. Jones oversees financial matters and approves budgets for Oak Tree, but has no direct involvement in decisions regarding plant improvements or maintenance, and had no knowledge of safety concerns at the plant. His office is in Lincoln County but he lives in the City of St. Louis. Jones is the only employee of Oak Tree who lives in the City of St. Louis.

Rich Fields, a resident of Cole County, is a customer of Oak Tree. On July 1, 1999, an explosion at Oak Tree's Lincoln County plant severely injures Fields while he is at Oak Tree's plant making a purchase.

On June 1, 2004, Fields files a negligence lawsuit in the Circuit Court of the City of St. Louis, naming Jones as a defendant and mistakenly naming Oak Branch, Inc., which has no connection with Oak Tree or the Lincoln County plant. Fields' claim against Jones is based solely on Jones' approval of company budgets. On June 20, 2004, the summons and petition are served on the president of Oak Tree at its headquarters in Jackson County. On July 14, 2004, before any responses to the petition have been filed, Fields files an amended petition naming Jones and Oak Tree, Inc., instead of Oak Branch, and adds a count seeking punitive damages.

1. Oak Tree files a timely motion to transfer for improper venue.
 - a. What argument[s] should Oak Tree make in support of its claim of improper venue? Explain. Include in your discussion the standard the court should apply in deciding Oak Tree's venue motion.
 - b. If the court concludes that venue in St. Louis City is improper, to what court or courts can the case be transferred? Explain.

2. Oak Tree files a motion to dismiss based on the five-year statute of limitations applicable to Fields' claim. What arguments should Fields make in opposition to Oak Tree's motion?
3. Fifteen days after the entry of judgment after an adverse jury verdict, Oak Tree files a timely motion for judgment notwithstanding the verdict (JNOV), but does not file a motion for new trial. Twenty-five days after the entry of judgment, the trial court denies Oak Tree's JNOV motion, but orders a new trial based on an improper instruction. On Fields' appeal from the order granting a new trial, how should the court of appeals decide Fields' argument that the trial court did not have authority to grant a new trial? Explain.

Missouri Essay Question 4
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Administrative Law

Employee has been employed by Contracting Company for many years. Company hires Smokey to be Employee's new boss. Smokey smokes, and frequently smokes in Employee's presence. Employee is extremely allergic to tobacco smoke and is under a doctor's orders to avoid tobacco smoke in confined areas.

Employee asked Smokey to stop smoking in Employee's presence. Smokey refused. Employee took his complaint to the Owner of the Company. Owner refused to order Smokey to stop smoking in Employee's presence. Employee delivered a letter to Owner the next day that stated "I resign".

Employee applied to the Missouri Division of Employment Security ("Division") for unemployment benefits. Company objected because Employee resigned.

Under Missouri law, R.S.Mo. § 288.050.1(1), an employee shall be awarded unemployment benefits even if the employee quits if the decision to quit is "with good cause attributable to such work or the Claimant's employer."

An evidentiary hearing was conducted before the Division. During the hearing, Employee testified that he is extremely allergic to tobacco smoke. He testified that he asked Smokey and Owner to stop the smoking in his presence but that both refused. Employee testified he resigned to protect his health. Employee introduced copies of his medical records to support the existence of his tobacco allergy. Company objected to the introduction of the medical records as hearsay, but the objection was overruled.

Company introduced into evidence Employee's written letter of resignation, which said nothing about the reason for Employee's resignation.

The Division ruled that:

- a. Employee voluntarily resigned;
- b. Employee suffered from an extreme tobacco allergy;
- c. Employee resigned because Owner and Smokey would not put a stop to the smoking in Employee's presence; and
- d. Employee resigned with good cause attributable to Employee's work pursuant to R.S.Mo. § 288.050.1(1).

Company exhausted all required administrative appeals. Company properly and timely appealed the Division's decision to the appropriate Division of the Missouri

Court of Appeals. Company asserts three issues on appeal: (1) were the Employee's medical records properly admitted; (2) did the Division commit error in ruling that Employee resigned because Owner and Smokey would not put a stop to smoking in Employee's presence; and (3) did the Division commit error in ruling Employee resigned with good cause.

1. Should the medical records of Dr. Good have been admitted? Explain.
2. What is the Court of Appeals standard of review of the Division's determination that Employee resigned because Owner and Smokey would not put a stop to Smokey's smoking in Employee's presence? Applying this standard of review, how should the Court of Appeals rule on this issue? Explain.
3. What is the Court of Appeals standard of review of the Division's determination that Employee resigned for "good cause" pursuant to R.S.Mo. § 288.050.1(1)? Applying this standard of review, how should the Court of Appeals rule on this issue? Explain.